

JUN 7 1976

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. **75-1708**

JUAN SANCHEZ LUGO,

*Petitioner,**against*

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, CHARLES F. ROTH, individually and in his capacity as Assistant Executive Secretary of the Employees Retirement Fund of the Illumination Products Industry, and KENNETH CEPPOS, SIMON GRAFSTEIN, LEONARD GOLUB, HANNIBAL IMBRO, JOHN H. KLIEGL, II, EDWARD R. MURPHY, JERRY SCHNEIT, ROWLAND J. SIMES, MEYER TEITELBAUM, WALTER WEISS, ALBERT BAUER, SOL BERMAN, JOSEPH BONO, STEPHEN KANYOOSKY, KAREL MRNKA, JOHN SCIACCA, LOUIS STEIN, THOMAS VAN ARSDALE, HARRY VAN ARSDALE, JR., and SANTOS ZAPPATA, as trustees of the Employees Retirement Fund of the Illumination Products Industry,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' MEMORANDUM IN OPPOSITION

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THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION
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STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' MEMORANDUM IN OPPOSITION

The question involved is whether Section 302(c)(5) of the Taft-Hartley Law required that Petitioner, an applicant for disability pension, be offered a hearing after Respondents' medical examiners reported that he was not disabled. The Second Circuit examined the merits of Petitioner's claim and affirmed the District Court's determination that Respondents' failure to offer Petitioner a hearing did not deprive him of any rights.

Section 302 was enacted "to remove the corruptive influence of side payments" to union officers and other per-

sons. (See Petition, A-7, footnote 2.) Section 302(c)(5) provides that Respondents' Retirement Fund be operated "for the sole and exclusive benefit of the employees . . ." (Petition, page 4). Respondents contested the jurisdiction of the Federal Courts and urged that this quoted language required only that the Respondents' Retirement Fund make no payments to anyone *other than* employees. (Petition, A-36) The Second Circuit stopped short of expressly adopting Respondents' interpretation of this provision, but rejected Petitioner's contention that Section 302 confers on the Federal Courts the power to create a federal common law governing the management of pension plans, (Petition, A-36)

The Petitioner urges (Petition, page 12) that certiorari be granted because the pension plans referred to in Section 302(c)(5) cover millions of employees and manage billions of dollars. The Petitioner ignores the fact that all of these pension plans now are strictly regulated by the U. S. Department of Labor and by the Internal Revenue Service pursuant to provisions of the Employee Retirement Income Security Act of 1974 (ERISA). As the Second Circuit noted, Congress paid careful attention in ERISA to procedural rights (Petition, A-36-37). The Petitioner's application for disability pension preceded the enactment of ERISA.

The Petitioner implies (Petition, pp. 13-14) that the Second Circuit's decision actually conflicts with the decision of the District of Columbia Circuit in *Sturgill v. Lewis*, 372 F.2d 400 (D.C. Cir. 1966). The Court's statement in *Sturgill* that a participant is entitled to a due process hearing was mere dictum. The applicable law in the District of Columbia Circuit is that a District Court's duty is to determine whether the material before the pension trustees sufficed to support their decision. *Danti v. Lewis*, 312 F.2d 345 (D.C. Cir. 1962) Moreover, *Sturgill* does not discuss the underlying jurisdictional problem,

and is inapposite with respect to the jurisdictional problem since the Federal Courts are the only courts in the District of Columbia. There is therefore no actual conflict between the Circuits.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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